

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

Jasmine Myrick,)	
)	
Petitioner,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
vs.)	
)	Case No. 4:10-cv-064
Vance Gillette and Three Affiliated Tribes,)	
)	
Respondents.)	

On August 30, 2010, the petitioner, Jasmine Myrick, filed a motion for leave to proceed in forma pauperis and a pro se habeas corpus petition under 25 U.S.C. § 1303 by a person in tribal custody. See Docket Nos. 1 and 2. On September 2, 2010, Magistrate Judge Charles S. Miller, Jr. granted Myrick's motion for leave to proceed in forma pauperis and issued a Report and Recommendation wherein he recommended that the Court deny Myrick's petition "without prejudice to a later refiling after available tribal remedies have been exhausted or Myrick is able to demonstrate exhaustion would be futile." See Docket No. 3. The parties were given fourteen (14) days to file objections to the Report and Recommendation. No objections have been filed.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 3) in its entirety and **DENIES** Myrick's petition (Docket No. 2) without prejudice to a later refiling after available tribal remedies have been exhausted or Myrick is able to demonstrate exhaustion would be futile. Myrick's mere statement that the tribal appellate court is not functioning or lacks jurisdiction, without more, does not suffice for purposes of demonstrating futility.

IT IS SO ORDERED.

Dated this 23rd day of September, 2010.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court